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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,406	12/18/2000	Weiyu Fan	11936.6US11	2546

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EXAMINER

DEWITTY, ROBERT M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,406

Applicant(s)

FAN ET AL.

Examiner

Robert M DeWitty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-31 is/are pending in the application.
- 4a) Of the above claim(s) 18-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 7-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claims 1-31 are pending in the instant application. Acknowledgement is made to Applicant's Election of chitosan. Claims 18-31 are withdrawn from further consideration as being drawn to a non-elected invention.

Election/Restrictions

1. Claims 18-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 13.
2. Applicant's election with traverse of Group I, claims 7-17 is acknowledged. The traversal is on the ground(s) that it would not be undue burden for the Examiner to search all claims. This is not found persuasive because the inventions are clearly divergent as shown by their classification in different classes (class 514 and 536).

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsugita et al. (U.S. Pat. No. 4,983,304).

Tsugita relates to a membrane composed of a chitosan having a deacetylation degree adjusted to 80 to 95% and having a molecular weight of 80,000 to 150,000 (Abstract). The membrane would be used for separation technology, such membrane being excellent in selective water permeability (col. 2, lines 24-30). Chitosan is prepared by deacetylating chitin.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsugita et al., further in view of Okada et al. (U.S. Pat. No. 5,905,035).

As stated above, Tsugita teaches a membrane composed of a chitosan having a deacetylation degree adjusted to 80 to 95% and having a molecular weight of 80,000 to 150,000. Chitosan is prepared by deacetylating chitin.

Okaga relates to extracting chitin from *Mucoriopsis ellipsoidus*. It is taught that commercial uses for chitin and chitosan include pharmaceuticals, agriculture, cosmetics, food additives, and separations (col. 1, lines 39-45). Okaga teaches that while the current commercial source of chitin and chitosan is shellfish waste, fungi also

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provides a major source of chitin. Extraction of chitin from fungi, Okaga continues, provides a more controllable route to get a purer and more consistent chitin than obtained from shellfish waste (col. 2, lines 6-17).

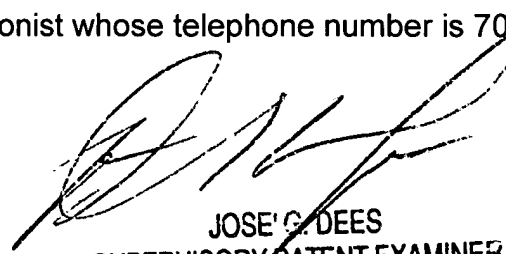
Motivation to utilize fungi to produce a membrane for separation made of chitosan would have arisen because fungi are known to provide a purer and more consistent chitin than shellfish waste. In the field of separation technology, one would have been motivated to utilize chitosan having a deacetylation degree of from 80 to 95% in the membrane in order to obtain a membrane with excellent selective water permeability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Primary, Neil Levy, can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
May 14, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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